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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,248	01/28/2002	Richard S. Kusleika	19369/110/101	2461

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EXAMINER

BUI, VY Q

ART UNIT PAPER NUMBER

3731

DATE MAILED: 07/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/936,248

Applicant(s)

KUSLEIKA ET AL.

Examiner

Vy Q. Bui

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8 and 9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/14/03; 4/3/03; 1/6/03; 7/1/02; 2/20/02
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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**DETAILED ACTION*****Election/Restrictions***

Applicant's election without traverse of Species IV in the reply filed on 4/20/2004 is acknowledged.

***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the retrieval sheath 20 positioned distally of cover 30 when cover 30 is in its deployed configuration must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any

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required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3 and 8-9 are rejected under 35 U.S.C. 102(e) as being anticipated by DUBRULK et al. (6,221,006).

As to claim 1, DUBRUL (Fig. 5) shows a medical device/TRAP with working element 13 and a shaft extending proximally from the working element, a retrieval braid cover/PYTHON 20 of an elastic material such as a nickel-titanium alloy (col. 14, lines 15-18) as recited in the claim.

As to claims 2-3 and 8, DUBRUL discloses cover/PYTHON 20 made of Ni-Ti alloy, which will self expand when a thermal energy source is supplied (for example a patient body heat). During deployment the cover along a blood vessel of a patient, in order to retain the cover/PYTHON 20 made of Ni-Ti alloy as taught by DUBRUL (col. 14, lines 1-18) from self expansion, a retrieval sheath (not shown in Fig. 5, but shown in Fig. 7 as sheath 27 and described in col. 10, lines 27-39) must be provided to contain the cover/PYTHON during deployment or to collapse/retrieve the cover/PYTHON inside the

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sheath during withdrawing the cover/PYTHON and medical device/TRAP out of the patient body.

As to claim 9, DUBRUL (Fig. 5 and 7) inherently discloses a method of retrieving a thrombus 4 with retrieval cover/PYTHON 20 and medical device/TRAP 13 as recited in the claim.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over DUBRULK et al. (6,221,006).

As to claims 4-5, DUBRUL does not disclose the form and dimension of the distal tip of retrieval sheath 27 as recited in the claims. However, it would have been quite within a level of a person of ordinary skill in the art to make DUBRUL distal tip of retrieval sheath 27 as claimed, because the configuration of the distal tip is just a matter of a design choice.

As to claim 6, DUBRUL does not disclose a radiopaque material for monitoring the deployment of the device in the patient body. However, using a radiopaque band or material fixed to a medical device for easy monitoring the device during deployment is well known in the art and it would have been obvious to one of ordinary skill in the art to

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provide a radiopaque marker or material fixed to the device so as a physician can monitor the location of the retrieval cover and trap during a medical procedure.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 703-306-3420. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, McDermott or Shaver can be reached on 703-308-0858. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



07/07/2004

Vy Q. Bui  
Primary Examiner  
Art Unit 3731